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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1953.

3464
ILL—JC
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No. [redacted]106

PEOPLE OF THE STATE OF ILLINOIS ex rel. WILLIAM J. KENNEDY,

Petitioner,

vs.

STEPHEN E. HURLEY, CHARLES A. LAHEY and ALBERT W. WILLIAMS, CIVIL SERVICE COMMISSIONERS OF THE CITY OF CHICAGO,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS.

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INDEX.

	PAGE
Opinions Below	2
Jurisdiction	2
Question Presented	2
Statute Involved	2
Statement of Case	3
Specification of Error to be urged	4
Reasons for Granting the Writ	5
Appendix	9

CITATIONS.

CASES:

Cartan v. Gregory, 329 Ill. App. 307, 320	8
Funkhauser v. Coffin, 301 Ill. 257	7
Hahnemann Hospital v. Industrial Board, 282 Ill. 316	7
People ex rel. Fosse v. Allman, 329 Ill. App. 296	7

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PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS.

WILLIAM J. KENNEDY, petitioner, prays that a writ of certiorari be issued to review the decree of the Appellate Court of Illinois entered in the above cause on October 28, 1952 reversing the judgment of the Circuit Court of Cook County, Illinois.

OPINIONS BELOW.

The trial court filed no opinion.

The opinion of the Appellate Court of Illinois is reported in 348 Illinois Appellate 265.

The Supreme Court of Illinois filed no opinion.

JURISDICTION.

The judgment of the Appellate Court sought to be reviewed was entered on October 28, 1952. (R. 60) Petitioner filed a petition for rehearing which was denied on December 9, 1952. Petition for leave to appeal to the Supreme Court of Illinois was denied on March 11, 1953. The jurisdiction of this Court is invoked under Section 210 (C) of the Judicial Code of 1949. See also Rule 38 of the Rules of the Supreme Court of the United States.

QUESTION PRESENTED.

Whether loss of transcript of trial proceedings by respondent—either deliberate or otherwise—was not such a violation of the right of petitioner under the 14th Amendment as to deprive him of his property without due process of law.

STATUTE INVOLVED.

The Statute involved is:

Section 12, Civil Service Act, Chap. 24½.
Smith-Hurd Illinois Annotated Statutes.

STATEMENT OF THE CASE.

The petitioner, William J. Kennedy, was a police officer of the City of Chicago for 17 years, all of which time he had an unblemished record for honesty, integrity and courage.

Unfortunately for petitioner in 1938 an effort was made to organize a Union of Private Detectives. The man seeking to organize said Union was named Kennedy, although petitioner had nothing to do with the Union. This coincidence was the basis for the charges placed against petitioner before the Civil Service Commission.

The Civil Service Commission ordered him discharged from the police force.

Petitioner thereafter filed a petition for a writ of certiorari to review the findings of the Civil Service Commission. Said petition for a writ of certiorari was assigned to the Honorable Harry M. Fisher, Judge of the Circuit Court of Cook County.

Respondents then started a course of conduct calculated to dispose of the action without disclosing that either they did not wish to produce, as required by law, or had lost the transcript.

In their return to the writ of certiorari they stated: "That the following is a full, true and complete transcript of the record of said proceedings affecting said plaintiff certified by the said Civil Service Commission of the City of Chicago." (R. 33)

When petitioner disclosed that there was no transcript the court ordered respondents to produce same. (R. 57) The respondents simply stated:

> "I might say the reason we haven't attached the transcript of evidence in this case, is this, the transcript has been lost. We can't find it. We only make one transcript and that has been lost and the court reporter's notebook has also been lost, so we cannot make a new transcript." (R. 51)

When this disclosure was made Judge Fisher reversed the finding of the Civil Service Commission and ordered petitioner reinstated. (R. 57)

From this order of Judge Fisher respondents appealed. The Appellate Court reversed Judge Fisher, (R. 60) and ordered the findings of the Civil Service Commission reinstated.

Petition for leave to appeal to the Supreme Court of Illinois was denied.

SPECIFICATION OF ERROR TO BE URGED.

The Appellate Court of Illinois erred:

1. In failing to hold that the loss of the transcript and failure to produce same was a violation of the constitutional right of Petitioner which guarantees that he shall not be deprived of his property without due process of law.

REASONS FOR GRANTING THE WRIT.

Petitioner by action of respondents and through no fault of his own was deprived of the right to effective review of his case and of due process of law in violation of the 14th Amendment.

The Appellate Court of Illinois has sanctioned a departure from the accepted and usual course of judicial proceedings by acquiescing in the wrongful disposition by respondents of the transcript of testimony. The "loss" of the transcript of testimony deprived petitioner of the right to show the lack of jurisdiction as well as the glaring passion and prejudice of the Civil Service Commission in ordering petitioner discharged from the Police Department of the City of Chicago.

The Civil Service Commission acting under the authority of Sec. 12, Civil Service Act, Smith-Hurd Illinois Annotated Statutes, Chap. 24½, Par. 51 (see App. pp. 9) held a number of hearings on charges placed against petitioner by the Commissioner of Police of the City of Chicago.

On April 15, 1940 only two of the Civil Service Commissioners signed an order to discharge petitioner from the service of the City of Chicago, which said order of discharge was never approved by the full Commission, as required by law.

Petitioner thereafter filed his petition for writ of certiorari. Respondents filed their return. In spite of the

fact that the transcript of testimony was not included in the return[1] as required by law,[2] respondents certified:

> "That the following is a full, true and complete transcript of the record of said proceedings affecting said plaintiff certified by the said Civil Service Commission of the City of Chicago:"

Upon notice to the court that the transcript was in fact not included in the return and later upon insistence of the court that the transcript of testimony be presented forthwith respondents finally stated (R. 51):

> "I might say the reason we haven't attached the transcript of evidence in this case, is this, the transcript has been lost. We can't find it. We only make one transcript and that has been lost and the court reporter's notebook has also been lost, so we cannot make a new transcript."

When this admission was made by respondents Judge Fisher stated: (R. 57)

> "The Court: This fails to show that I ordered you to produce the transcript and you then came in and said that it was lost."

and also:

> "The Court: But don't you see that on certiorari the only time you are required to produce the transcript is if the Court orders you to do it, and I did, and that is the whole proceeding here and that is not shown. I quashed the return because the transcript was not there."

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[1] Opinion of the Corporation Counsel of the City of Chicago (1923-1924) page 267: "17. The stenographer employed at the said hearing shall transcribe his notes immediately following said hearing, and these notes so transcribed with proper affidavit of the stenographer attached to same shall constitute part of the records of the case."

[2] The Civil Service Commission in its "findings and decision" stated: That they met, (R. 37) "for the purpose of investigating the foregoing charges, (against petitioner) proceeded to hear and did hear testimony of the witnesses, a record of which is preserved and on file in the office of the Commission."

Since jurisdiction by the Civil Service Commission was controlling, it could only be proved by the transcript of the testimony. The applicable rule is stated in *Funkhouser* v. *Coffin*, 301 Ill. 257, 261:

> "There is no presumption of jurisdiction in favor of a body exercising a limited or statutory jurisdiction. Nothing is taken by intendment in favor of such jurisdiction but the facts upon which the jurisdiction is founded must appear in the record."

To the same effect: *Hahnemann Hospital* v. *Industrial Board*, 282 Ill. 316, 318.

> "The record must show facts giving the inferior tribunal jurisdiction, and mere conclusions of law are not sufficient."

In the leading case of *People ex rel. Fosse* v. *Allman*, 329 Ill. App. 296, 301-302, the court stated:

> "• • • Plaintiff asserts that the recitals in the return are not enough to show jurisdiction; that they are nothing more than mere conclusions; and that the testimony must be included, which is the only sure and safe way to show that the required jurisdictional facts were actually present.
>
> "We agree with plaintiff that where the jurisdiction of the Commission is challenged, the return should include the transcript of the testimony. In the instant case the testimony is a part of the record of the Civil Service Commission. The return so recites. The courts are not precluded by the Commission's mere recital. 'The record must show that the board acted upon evidence and contain the testimony upon which the decision was based, in order that the court may determine whether there was any evidence fairly tending to sustain the order.' "

The naked statement without proof by respondents that the transcript of testimony and stenographer's notes were lost was entirely lacking in significance and was certainly

a fatal defect in their return. The requirement was succinctly stated by the Appellate Court of Illinois in *Cartan* v. *Gregory*, 329 Ill. App. 307, 320-321:

> "Defendants contend that they are not required to return a transcript of the testimony. We hold that where the action of the Commission in discharging an employee is challenged on the ground that the jurisdictional requisites were not met, as in the instant cases, that the record must include the transcript of the testimony."

Obviously petitioner has been denied a fundamental right.

CONCLUSION.

Petitioner, a respected member of the police force of the City of Chicago for upwards of 17 years, has through no fault of his own been denied the right to an effective review of the findings of the Civil Service Commission.

Moreover, the protection of public officers from persecution is of just as much public importance as the punishment of those who abuse public trust—for otherwise public officers must inevitably be stultified by fear and deterred from effectual service. The public interest is, therefore, doubly involved in this case—that, in a democracy, justice shall be fair, regular, and in accord with the law of the land; and that the officials of the state shall be protected to the same extent as other citizens.

Wherefore, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

DANIEL D. GLASSER,
Counsel for Petitioner.

JOHN F. TYRRELL,
EUGENE R. WARD,
Of Counsel.

APPENDIX.

Smith-Hurd Illinois Annotated Statutes: Chapter 24½—Section 12.

51. Removals—Suspensions

No officer or employe in the classified civil service of any city who shall have been appointed under said rules and after said examination, shall be removed or discharged except for cause, upon written charges and after an opportunity to be heard in his own defense. Such charges shall be investigated by or before said civil service commission, or by or before some officer or board appointed by said commission, to conduct such investigation. The finding and decision of such commission or investigating officer or board, when approved by said commission, shall be certified to the appointing officer, and shall be forthwith enforced by such officer. Nothing in this act shall limit the power of any officer to suspend a subordinate for a reasonable period, not exceeding thirty days. In the course of an investigation of charges each member of the commission, and of any board so appointed by it, and any officer so appointed shall have the power to administer oaths and shall have power to secure by its subpoena both the attendance and testimony of witnesses, and the production of books and papers relevant to such investigation. Nothing in this section shall be construed to require such charges or investigation in cases or laborers or persons having the custody of public money, for the safe keeping of which another person has given bonds. (1895, March 20, Laws 1895, p. 85, §12.)